

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA EX REL.)
STEPHEN McMULLEN,) No. 3:12-CV-00501
Relator,)
)
v.) Judge Campbell
)
ASCENSION HEALTH,) Magistrate Judge Griffin
Defendant.)
)
) Oral Argument Requested

**DEFENDANT ASCENSION HEALTH'S MOTION TO DISMISS RELATOR'S
COMPLAINT FOR DAMAGES (DKT. 1)**

Defendant Ascension Health (“Ascension”) respectfully moves, pursuant to Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6), to dismiss Relator Stephen McMullen’s Complaint for Damages (the “Complaint”) (Dkt. 1).

1. Stephen McMullen claims status as a relator under 31 U.S.C. § 3730(b)(2). In a single count McMullen alleges violations of the False Claims Act, 31 U.S.C. §§ 3729(a)(1), (a)(2), and (a)(3), by Ascension, the sole defendant. The Complaint should be dismissed because it fails to plead fraud with the particularity required by Federal Rule of Civil Procedure 9(b) and fails to allege a plausible claim upon which relief can be granted under Federal Rules of Civil Procedure 8(a) and 12(b)(6).

2. In further support of this Motion, Ascension relies upon the supporting Memorandum of Law and Exhibit 1, Declaration of James C. Buck, filed concurrently herewith in accordance with Local Rule 7.01(a) of the United States District Court for the Middle District of Tennessee.

Wherefore, having moved pursuant to Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6), to dismiss the Complaint on the grounds that it fails to plead fraud with particularity and fails to state a plausible claim upon which relief can be granted, Ascension respectfully submits that its Motion should be granted and that McMullen's Complaint should be dismissed with prejudice.

Respectfully submitted,

Dated: June 18, 2013

/s/ Gregory M. Luce
GREGORY M. LUCE (ADMITTED PRO HAC VICE)
MAYA P. FLORENCE (ADMITTED PRO HAC VICE)
JAMES C. BUCK (ADMITTED PRO HAC VICE)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Avenue, NW
Washington, DC 20005
(202) 371-7000

THOR Y. URNESS (TENN. BAR NO. 13641)
BRADLEY ARANT BOULT CUMMINGS LLP
1600 Division Street
Suite 700
Nashville, TN 37203-0025
Phone: (615) 244-2582
Fax: (615) 252-6380
Email: turness@babc.com

Attorneys for Ascension Health

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 18, 2013 the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which automatically serves notification of such filing to the following counsel of record:

Russell A. Wood
Wood Law Firm, P.A.
288 Eastland Drive
Memphis, TN 38111

Thomas P. Thrash
Thrash Law Firm, P.A.
1101 Garland Street
Little Rock, AR 72201

John-David H. Thomas
Office of the United States Attorney
110 Ninth Avenue, S
Suite A961
Nashville, TN 37203-3870

/s/ Gregory M. Luce
Gregory M. Luce